

# The Freedom of Information Act

Administrative Issues





# The FOID Administrative Process

- Receipt of a written FOIA request
- Direct/Task to search for responsive records
- Coordinate multiple reviews
- Release determination made and response letter issued
- Right to file an administrative appeal
- Right to file a FOIA lawsuit in federal district court

# Summary of Tasked Office's Responsibilities

- Conduct search
  - “Records Found”
  - “No Record”
  - Recommend Offices with Equities
- Review records
  - Deny in full (requires exemption/IDA approval)
  - Deny in part (“partial”—requires exemption/ IDA approval)
  - Grant in full (no IDA involvement)
  - Recommend consultations/referrals
- Recognize that the FOIA is a statute
  - All actions have legal implications
  - All case documents are legal documents

# The Administrative Process

- Receipt of a FOIA request 
  - 20 day statutory time limit to make a release determination
  - What is scope of request? What is being requested?
  - Agency records (including electronic records)
  - Where to search?
- Request extension if you cannot 20-day time frame



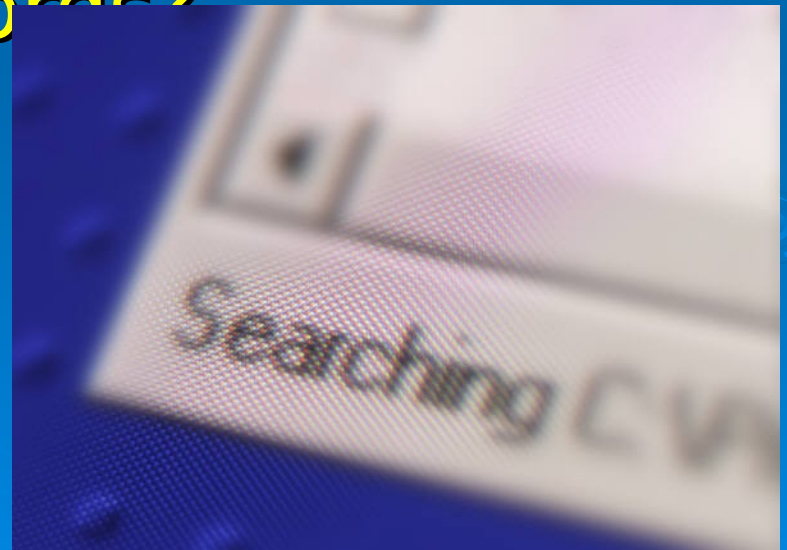
# An Adequate Search



- Agencies must undertake a search that is “reasonably calculated to uncover all relevant documents.”
- Must search everywhere it is reasonably likely responsive records exist
- Two hours of search time provided free
- No records vs. cannot locate

# Conducting A Search

- Best practice: Keep a record of where you searched and the search terms used to conduct search.
- Think outside the box—should we have responsive records?
- If not, who would?
- Google search?





# Records Found

- Are located records responsive?
- Are there duplicates? Is marginalia distinguishing?
- Count the number of pages/number of documents located
- Did you locate records responsive to each item listed in request?
- Note “no records” for those items for which you found no records



# Reviewing Responsive Records

- What exemptions apply?
- Segregate non-exempt information
- Should another office review the records?
- Are consultations and/or referrals required?
- Is research needed to determine whether material is public?





# *Reviewing Documents*

- Make a copy of the responsive documents.
- Count the number of pages, not documents.
- Review each page and bracket exempt information that should be withheld.
- DO NOT mark original documents.
- Cite all exemptions that you think apply to the exempt information.



# Reviewing Documents

Duty to segregate: The FOIA requires that agencies review each document, line-by-line, to determine if there is non-exempt information that can be segregated out for release. 5 U.S.C. § 552(b).



Courts are especially interested that agencies comply with this requirement

# Reviewing Documents

- Must identify other agency equities contained in your documents:
  - Referrals--your file contains documents that originated with another DoD component/command, or another federal agency
  - Consultation--your file contains documents that contain information that originated with another DoD component/command, or another federal agency

# Important Notes about Reviewing Records

- Did you take into account “Segregability”?
- Are you “re-classifying” Unclassified information?
- Are you “rubber stamping” or discerning releasability?
- Did you bracket exempted material on the records and provide a clean copy for internal use?
- Did you note page/document count if records are “denied in full”?

# Release Determination



- Your release determinations are communicated to the requester in response letters
- Must cite statutory authority (an exemption) to withhold information
- Legal ramifications
- Right to appeal release determinations, including “no record” responses

# Administrative Appeals

- The FOIA provides the requester with the right “to appeal to the head of the agency any adverse determination.”  
5 U.S.C. § 552(6)(A)(i).
  - No statutory requirements for language of appeal
  - All appeals include the adequacy of the search
  - Must file an administrative appeal before filing a lawsuit in federal district court
  - Can file an appeal from the failure to respond within 20 days

# Administrative Appeals

- Appeals are review by appellate authority
- Review of administrative record—keep good notes
- After an appeal is filed, requester can proceed to court

